

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TOM VER LLC d/b/a MEXFRESH
PRODUCE,

Plaintiff,

v.

ORGANIC ALLIANCE, INC., PARKER R.
BOOTH, MARK Y. KLEIN, MICHAEL
ROSENTHAL, CHRISTOPHER WHITE, and
BARRY M. BROOKSTEIN, each individually,

Defendants.

Case No. C-13-03506-LHK

**ORDER GRANTING PRELIMINARY
INJUNCTION**

Plaintiffs filed an *ex parte* motion for a temporary restraining order under Rule 65 for violations of the Perishable Agricultural Commodities Act ("PACA"). *See* 7 U.S.C. 499a *et seq.* On August 8, 2013, the court granted plaintiff's motion for a temporary restraining order and ordered a hearing on a preliminary injunction be held on August 16, 2013. The court then continued the hearing until August 19, 2013, to allow Tom Ver more time to serve the defendants. At the hearing only Tom Ver appeared.

The court finds that a preliminary injunction is warranted. *See generally, Winter v. Natural Resources Defense Council, Inc.* 555 US 7, 20 (2008). The court finds that Tom Ver is likely to succeed on the merits in establishing that it is a beneficiary of a trust under PACA in the amount of \$50,679.44 and that defendants have either dissipated the trust or are likely to dissipate the trust in


1 violation of PACA. *See* 7 U.S.C. § 499e(c). Tom Ver is likely to suffer irreparable injury due to
 2 the dissipation of the trust. The balance of equities tips in Tom Ver's favor and Congress has found
 3 that the public interest is served by the enforcement of these trusts. *See* 7 U.S.C. § 499e(c)(1).

4 The court issues the following preliminary injunction with respect to Organic Alliance. The
 5 court will not issue a preliminary injunction with respect to the other defendants, at this time,
 6 because service is not adequate.

7 Therefore, it is hereby ordered that:

- 8 1. Pending further orders of this court or until defendants pay Tom Ver, no agents, officers,
 9 subsidiaries, assigns, banking institutions, or other entity holding funds for Organic
 10 Alliance shall pay, transfer or permit assignment or withdrawal of any assets of Organic
 11 Alliance or its subsidiaries or related companies except as set forth in this order;
- 12 2. Within three business days of the entry of this order, Organic Alliance shall pay Tom
 13 Ver \$50,679.44 or deposit \$50,679.44 into the registry of this court;
- 14 3. If Organic Alliance fails to deposit or pay the \$50,679.44 within 3 business days,
 15 Organic Alliance must file with this court an accounting which identifies all of Organic
 16 Alliance's assets and liabilities, and each account receivable, signed under penalty of
 17 perjury;
- 18 4. Because Organic Alliance possesses \$50,679.44 of PACA trust assets, which are Tom
 19 Ver's property, the bond is set at \$0.00;
- 20 5. This preliminary injunction shall remain in effect until the conclusion of this proceeding
 21 or further order of this court, whichever occurs first;
- 22 6. Tom Ver is ordered to promptly serve a true and correct copy of this order on all of the
 23 defendants including their respective counsel, if known.

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 26 Dated: August 26, 2013


 Ronald M. Whyte
 United States District Judge